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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RENATO LIBRIC,

Defendant.

Case No. 18-CR-00196

**DEFENDANT RENATO LIBRIC'S
EMERGENCY MOTION FOR
COMPASSIONATE RELEASE
PURSUANT TO 18 U.S.C. §
3582(C)(1)(A)**

Defendant RENATO LIBRIC, by and through his attorney of record, Patrick S. Aguirre, hereby submits this Motion for Compassionate Release. Defendant will and hereby does move the Court for an order for his immediate release from custody under 18 U.S.C. § 3582(C)(1)(A).

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2 This motion is based upon the attached memorandum of points and authorities, all
3 files and records in this case, and such evidence and argument as may be presented at the
4 hearing on the motion. Due to the urgency of this emergency request, Mr. Libric requests
5 an expedited briefing schedule and hearing at the Court's earliest convenience.

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7 Dated: August 6, 2020

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9 By: /s/ Patrick S. Aguirre
10 Patrick S. Aguirre, Esq.
11 Attorney for Defendant,
12 RENATO LIBRIC

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

4 Renato Libric entered a guilty plea to a violation of 18 U.S.C. § 1343. On December
5 19, 2018, he was sentenced to 36 months in the custody of the Bureau of Prisons (“BOP”).
6 Mr. Libric has been in custody since his arrest in May 2018 and has served nearly three-
7 quarters of his sentence. He is currently housed in North Lake Correctional Facility in
8 Baldwin, Michigan after being transferred from Taft Correctional Institute, which closed.
9 On June 8, 2020, Mr. Libric made his second written request to the warden for
10 compassionate release based on a medical condition. Exhibit 1. On June 16, 2020, counsel
11 included a copy of that request in correspondence to the warden. *Id.* To date, neither Mr.
12 Libric nor counsel has received a response from the warden. Mr. Libric suffers from heart
13 issues, including hypertension, placing him at high risk should he contract Covid-19.
14 Further, his elderly mother suffers from terminal lung cancer, as well as cryptogenic
15 organizing pneumonia. She resides in Croatia, the country to which Mr. Libric will be
16 extradited upon his release. Mr. Libric’s elderly wheelchair-bound father, wife, and young
17 son also reside in Croatia.

Given these extraordinary and compelling circumstances, compassionate release is warranted for this first-time, non-violent offender who is at high risk of contracting the Covid-19 virus.

II.

ARGUMENT

A. Mr. Libric Is Eligible for Compassionate Release Under 18 U.S.C. § 3582

24 18 U.S.C. § 3582(c)(1)(A)(i) authorizes this Court to modify a term of
25 imprisonment:

26 “[T]he court, upon motion of the Director of the Bureau of Prisons, or upon motion
27 of the defendant after the defendant has fully exhausted all administrative rights to
28 appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf
or the lapse of 30 days from the receipt of such a request by the warden of the

1 defendant's facility, whichever is earlier, may reduce the term of imprisonment (and
 2 may impose a term of probation or supervised release with or without conditions that
 3 does not exceed the unserved portion of the original term of imprisonment), after
 4 considering the factors set forth in section 3553(a) to the extent they are applicable,
 5 if it finds that (i) extraordinary and compelling reasons warrant such a
 6 reduction...and that such a reduction is consistent with applicable policy statements
 7 issued by the Sentencing Commission."

8 Notably, "extraordinary and compelling reasons" include situations where the
 9 defendant is suffering from a serious physical or medical condition that "substantially
 10 diminishes [his] ability to provide self-care within the environment of a correctional
 11 facility." U.S.S.G. §1B1.13, Application Note 1(A)(ii).

12 **B. Requiring Exhaustion Would Be Futile, Provide Inadequate Relief, and Result
 13 in Irreparable Harm**

14 In April 2020, Mr. Libric made a written petition to the warden of the facility in
 15 which he was incarcerated at the time, Taft Correctional Institute. He was subsequently
 16 transferred to North Lake Correctional Facility upon the closure of Taft CI. On June 8,
 17 2020, Mr. Libric made his second request to the warden for compassionate release. *Id.* In
 18 a June 16, 2020 letter to the warden, counsel included a copy of Mr. Libric's second
 19 request. *Id.* Mr. Libric has requested the warden make a motion for his compassionate
 20 release on no less than three occasions, the most recent of which was made over thirty days
 prior to the filing of this motion. Thus, Mr. Libric clearly has satisfied the exhaustion
 requirements of § 3582(c)(1)(A)(i).

21 However, should the Court find any defect with his written request to the warden,
 22 Mr. Libric requests the Court consider his motion now because requiring exhaustion would
 23 be futile, cause irreparable harm, provide inadequate relief, and result in prejudice.

24 "Even where exhaustion is seemingly mandated by statute... the requirement is not
 25 absolute." *Washington v. Barr*, 925 F.3d 109, 118 (2d Cir 2019); *see also McCarthy v.*
26 Madigan, 503 U.S. 140, 146 (1992). If the interest in efficiency that the exhaustion
 27 doctrine is designed further is outweighed by the defendant's interest in immediate judicial
 28 review, exhaustion is not required. *Id.* at 146. Exhaustion may be waived where: "it would

1 be futile, either because agency decision-makers are biased or because the agency has
 2 already determined the issue” or because it “results in catastrophic health consequences”;
 3 “the administrative process would be incapable of granting adequate relief” or where relief
 4 becomes inadequate due to undue delay; or exhaustion would subject the defendant to
 5 undue prejudice or irreparable harm. *Washington*, 925 F.3d at 118-120; *see also*
 6 *McCarthy*, 503 U.S. at 146-147.

7 Mr. Libric meets all three considerations: exhaustion would be futile because the
 8 BOP has already determined the issue by failing to act and because Covid-19 will result in
 9 catastrophic health consequences; relief would become inadequate if Mr. Libric contracts
 10 Covid-19 due to the delay; and exhaustion would subject Mr. Libric to irreparable harm.

11 If the BOP was going to act, Mr. Libric would have already been released pursuant
 12 to Attorney General Barr’s March 26, 2020 order to identify and transfer to home
 13 confinement any at-risk inmates who “are non-violent and pose minimal likelihood of
 14 recidivism.” Memorandum from Attorney General William P. Barr to Director of the
 15 Bureau of Prisons, 2 (March 26, 2020). Indeed, the BOP “seems to have ‘predetermined’
 16 the compassionate release issue by its failure to respond to the petitions before it.” *United*
 17 *States v. Connell*, 18-CR-00281, ECF No. 49 at *9 (N.D. Cal. May 8, 2020) (granting
 18 compassionate release to 69-year-old defendant who suffered from hypertension, high
 19 cholesterol, and pre-diabetes). The *Connell* court noted that “in the span of 15 days in early
 20 April, the BOP had received 550 compassionate release requests from inmates in one
 21 federal prison. It had responded to 7. All 7 were denied.” *Id.* The court continued:

22 “A growing chorus of courts around this country has found section 3582’s
 23 exhaustion provision is not a jurisdictional bar, but rather a claim-processing rule
 24 subject to exceptions which can and should be made under present circumstances.
 25 *See, e.g., Fischman*, 2020 WL 2097615 (N.D. Cal. May 1, 2020); *United States v.*
Guzman Soto, No. 18-cr-10086, 2020 WL 1905323 (D. Mass. Apr. 17, 2020); *United*
26 States v. Coles, No. 18-cr-20254, 2020 WL 1899562 (E.D. Mich. Apr. 17, 2020);
Russo, 2020 WL 1862294 (S.D.N.Y. Apr. 14, 2020); *Haney*, 2020 WL 1821988
 27 (S.D.N.Y. Apr. 13, 2020). The issue has developed so rapidly that at least one court
 28 has already reversed itself on the issue. *See United States v. Scparta*, No. 18-cv-
 00578, 2020 WL 1910481 (S.D.N.Y. Apr. 20, 2020). Here, an additional voice joins

1 that chorus and finds an exception to Section 3582's claim-processing exhaustion
 2 provision can, and should in the present circumstances, be recognized as the
 3 particular facts of the case dictate."

4 *Connell* at *9-10. Mr. Libric has brought this matter to the warden on three occasions. The
 5 warden has had since April to act. By failing to act in the three months since Mr. Libric's
 6 first request, the BOP has shown it has "already determined the issue" to Mr. Libric's
 7 detriment, and exhaustion is futile.

8 Due to the potential for irreparable harm and catastrophic health consequences, this
 9 Court should excuse exhaustion. Other courts have done the same in similar
 10 circumstances. *See, e.g., United States v. Powell*, No. 1:94-CR-316(ESH), ECF No. 98
 11 (D.D.C. Mar. 28, 2020) (granting defendant's motion for compassionate release based on
 12 Covid-19 pandemic and defendant's health conditions, waiving § 3582(c)(1)(A)'s
 13 exhaustion requirement based on futility); *United States v. Yahoshua Ben-Yhwh*, No. 1:15-
 14 CR-00830, ECF No. 206 (D. Hawaii, April 13, 2020) (waiving exhaustion requirement and
 15 finding that "even a few weeks of delay exposes [defendant] to contracting COVID-19 and
 16 thus rendering the relief...inadequate"). It is hard to imagine a more irreparable harm than
 17 death, and that is what Mr. Libric faces as a high-risk individual exposed to Covid-19.

18 Mr. Libric has requested compassionate release from the warden on three occasions.
 19 The most recent request was June 16, 2020. Accordingly, this Court should find he has
 20 satisfied § 3582's exhaustion requirement.

21 **C. There Are Extraordinary and Compelling Circumstances Justifying Release**

22 According to the BOP, North Lake Correctional Facility currently has a confirmed
 23 case of Covid-19 in an inmate. "BOP: COVID-19 Update" available at
 24 bop.gov/coronavirus, accessed on July 13, 2020. However, the actual number of infections
 25 in North Lake are much higher. There has been a large outbreak of Covid-19 with the
 26 influx of inmates from Taft CI. The North Lake warden told inmates that the bus drivers
 27 who drove them from the Detroit airport to North Lake—without wearing personal
 28 protective equipment—had tested positive and been hospitalized. Medical staff in North

1 Lake have told inmates that there have been two Covid-19 related deaths at the facility
 2 between April and May. The medical staff was at maximum capacity caring for 120
 3 inmates with Covid-19 at the peak of the outbreak, and additional inmates infected with
 4 Covid-19 were turned away and asked to self-isolate in their cells. Those inmates were left
 5 out of the official Covid-19 counts. Further, case numbers are being artificially decreased
 6 by the refusal of prison medical staff to provide Covid-19 tests to inmates. Based on the
 7 explosion of Covid-19 cases throughout BOP facilities across the country, these cases will
 8 increase exponentially.

9 According to the CDC, individuals who are incarcerated in jail or prison have a
 10 heightened risk of contracting Covid-19. *Interim Guidance on Mgmt of Coronavirus*
 11 *Disease 2019 (COVID-19) in Correctional and Detention Facilities*, Centers for Disease
 12 Control and Prevention (March 23, 2020). However, BOP's "containment measures have
 13 already proven insufficient to prevent the spread of COVID-19." *United States v.*
 14 *Rodriguez*, 2020 U.S.Dist.LEXIS 58718 at *9 (E.D. Penn. April 1, 2020). Staff at North
 15 Lake did not wear personal protective equipment or enforce any distancing measures until
 16 50 days into the outbreak. Moreover, inmates are unable to practice basic hygiene
 17 measures to prevent the spread of Covid-19: "Confined to a small cell where social
 18 distancing is impossible, [defendant] cannot provide self-care because he cannot protect
 19 himself from the spread of a dangerous and highly contagious virus." *United States v.*
 20 *Perez*, 2020 U.S.Dist.LEXIS 57265 (S.D.N.Y. Apr. 1, 2020). This is especially true in a
 21 maximum-security facility such as North Lake where social distancing is impossible.
 22 Release is justified where "the outbreak of COVID-19 and [a defendant's] underlying
 23 medical conditions [] place [him] at a high risk should he contract the disease." *United*
 24 *States v. Rodriguez*, 2020 U.S.Dist.LEXIS 58718 (E.D. Pa. Apr. 1, 2020).

25 Mr. Libric suffers from heart conditions, including hypertension and has been
 26 prescribed Lisinopril to be taken from May 7, 2020 to December 2, 2020. Exhibit 3.
 27 Individuals with high blood pressure are at increased risk of Covid-19, especially at a
 28 facility such as North Lake that does not have any respirators. See "People Who Are at

1 High Risk," Centers for Disease Control and Prevention, available at
2 [cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html),
3 accessed July 13, 2020. A study published on April 22, 2020 found that among
4 hospitalized Covid-19 patients, hypertension was the most common comorbidity at 56.6%.
5 Richardson, et al., *Presenting Characteristics, Comorbidities, and Outcomes Among 5,700*
6 *Patients Hospitalized With COVID-19 in the New York City Area*, JOURNAL OF THE
7 AMERICAN MEDICAL ASSOCIATION (April 22, 2020) at E7. Similarly, a study of patients in
8 Wuhan, China demonstrated that "patients with hypertension have more severe illness and
9 higher mortality rates than those without hypertension," specifically that "patients with
10 hypertension had more than 3 times the mortality rate of all other patients hospitalized with
11 COVID-19." Li, et al., *Association of Renin-Angiotensin System Inhibitors with Severity or*
12 *Risk of Death in Patients with Hypertension Hospitalized for Coronavirus Disease 2019*
13 *(COVID-19) Infection in Wuhan, China*, JOURNAL OF THE AMERICAN MEDICAL
14 ASSOCIATION, CARDIOLOGY (April 23, 2020) at E5.

15 Recently, On July 30, 2020, one hundred to two hundred federal inmates were
16 moved to North Lake County Facility from a federal prison in Oklahoma that closed its
17 facility. Some of these inmates are sick with Covid-19. Currently, no masks are being
18 provided to Mr. Libric or other inmates at North Lake Correctional Facility, subjecting
19 them to Covid-19. Mr. Libric and the other inmates have been in lockdown for over 150
20 days. This has subjected Mr. Libric to severe emotional distress.

21 Further, Mr. Libric's family circumstances are extraordinary and compelling
22 circumstances justifying release. *See U.S.S.G. § 1B1.13, Application Note (1)(C)-(D).* Mr.
23 Libric's mother, Anamarija Libric, resides in Croatia. She has been diagnosed with an
24 aggressive lung cancer and her health is deteriorating rapidly. Exhibit 2. She also suffers
25 from cryptogenic organizing pneumonia. Her lung capacity is at 25% and she requires
26 oxygen. She is currently cared for by Mr. Libric's father, who is elderly and confined to a
27 wheelchair. *Id.* Due to Mrs. Libric's medical conditions, they are self-isolating, which
28 makes it difficult to get basic supplies as they have no family members close by to help

1 them. Mr. Libric's wife and child live 200 miles away and do not have a vehicle and so are
 2 unable to assist his parents. The financial situation due to the pandemic has further strained
 3 Mr. Libric's parents. Mr. Libric is the family's only breadwinner. His presence will
 4 provide mental and emotional support, as well as practical support in the care of his
 5 parents. This Court has already recognized the compelling family circumstances,
 6 recommending at sentencing that Mr. Libric be considered for International Treaty transfer;
 7 however, the transfer was denied in January 2020 on the grounds that Mr. Libric had less
 8 than six months left on his sentence, despite his release date of November 28, 2020—
 9 eleven months after the transfer denial.¹

10 Based on Mr. Libric's hypertension which places him at high risk especially given
 11 the current conditions at North Lake Correctional Facility, and his family circumstances,
 12 including his mother who is dying of cancer in Croatia, this Court should find he has
 13 demonstrated "extraordinary and compelling circumstances" that justify compassionate
 14 release.

15 **D. Release Is Consistent with Section 3553(a)**

16 Under § 3582, the court must consider the Sentencing Commission policy statements
 17 and the § 3553(a) sentencing factors in determining whether to reduce a sentence. Those
 18 factors weigh in favor of release.

19 The Sentencing Commission states "extraordinary and compelling reasons" include
 20 situations where the defendant is suffering from a serious physical or medical condition
 21 that "substantially diminishes [his] ability to provide self-care within the environment of a
 22 correctional facility and from which he is unlikely to recover." U.S.S.G. §1B1.13,
 23 Application Note 1(A)(ii). As discussed above, Mr. Libric's hypertension places him at
 24 high-risk of mortality should he contract Covid-19. The high rate of Covid-19 cases
 25 running unchecked through BOP facilities demonstrates that individuals incarcerated in

27 ¹ "An extraordinary and compelling reason need not have been unforeseen at the time of
 28 sentencing in order to warrant a reduction in the term of imprisonment." U.S.S.G. §1B1.13,
 Application Note 2.

1 BOP facilities are unable to engage in the self-care behaviors—social distancing, mask
 2 wearing, frequent handwashing and disinfecting of surfaces²—shown to prevent the spread
 3 of Covid-19. In Mr. Libric’s case, his hypertension substantially diminishes his ability to
 4 defend against potentially fatal consequences.

5 Mr. Libric is not a danger to the safety of other persons or the community, as
 6 required for release under USSG § 1B1.13(2). Mr. Libric is a first-time offender of a non-
 7 violent felony. Upon his release, he presents no danger to the community as he will be
 8 extradited to Croatia, where he will reside with and care for his wife, young child, elderly
 9 father, and terminally ill mother.

10 Further, the sentencing factors weigh in favor of release. Prior to this case, Mr.
 11 Libric had no criminal history. The offense is non-violent. He accepted responsibility for
 12 his actions and admitted his guilt to the court. *See* Dkt. No. 17. He has been incarcerated
 13 for two years and two months without incident or disciplinary infraction.

14 Although non-violent, Mr. Libric’s offense was serious and caused a substantial
 15 financial loss to the victims. Accordingly, this Court determined a sentence of three years
 16 to be adequate to accomplish the goals of sentencing and to reflect the seriousness of the
 17 offense, promote respect for the law, and afford deterrence to future criminal conduct.
 18 This was a mid-range sentence, and the court indisputably had the authority to impose a
 19 harsher sentence. That the Court did not implies that this Court did not deem a harsher
 20 sentence appropriate or necessary. Mr. Libric has served nearly three-quarters of his
 21 sentence. However, with the explosion of Covid-19 cases in BOP facilities, further
 22 incarceration carries the risk of severe illness, lifelong health effects, and even death—far
 23 harsher consequences than this Court contemplated and deemed necessary when sentencing
 24 Mr. Libric.

25 “§ 3553(a)’s overarching provision instructing district courts to ‘impose a sentence

27 ² See “How to Protect Yourself & Others,” Centers for Disease Control and Prevention, available
 28 at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>, accessed
 July 13, 2020.

1 sufficient, but not greater than necessary' to accomplish the goals of sentencing."

2 *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (quoting 18 U.S.C. § 3553(a)).

3 Based on the devastating and potentially fatal consequences of Covid-19 to Mr. Libric,

4 further incarceration presents a harsher than necessary sentence. Early release under §

5 3582 satisfies both the Sentencing Commission policy statement and the parsimony

6 principle of § 3553(a).

7

8 **III.**

9 **CONCLUSION**

10 For the aforementioned reasons, Mr. Libric respectfully requests the Court grant his

11 request for compassionate release, reduce his sentence to time served, and order his

12 immediate release from custody.

13

14

15 Dated: August 6, 2020

16

17 By: /S/ Patrick S. Aguirre
18 Patrick S. Aguirre, Esq.
19 Attorney for Defendant,
20 RENATO LIBRIC

1 CERTIFICATE OF SERVICE

2 Case Name: USA v. Libric No. 18-CR-00196

3 I hereby certify that on August 6, 2020, I electronically filed the following
4 documents with the Clerk of the Court by using the CM/ECF system:
5 DEFENDANT RENATO LIBRIC'S EMERGENCY MOTION FOR
6 COMPASSIONATE RELEASE PURSUANT TO 18 U.S.C. § 3582(C)(1)(A)

7 I certify that all participants in the case are registered CM/ ECF users and that
8 service will be accomplished by the CM/ECF system.

9 I declare under penalty of perjury under the laws of the State of California the
10 foregoing is true and correct and that this declaration was executed on August 6, 2020, at
11 Downey, California.

12
13 Dated: August 6, 2020

/s/Luisa Sapien

14 Luisa Sapien, Declarant

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